

**REMARKS**

Claims 1-15 were originally filed in the application. Claims 16-21 were added in amendments. Claims 2-4 and 9 were previously withdrawn from consideration. Claims 1, 5-8 and 10-21 are rejected in the Office Action. Claims 1, 5-8, and 10-21 are pending. Reconsideration of claims 1, 5-8, and 10-21 is respectfully requested.

In the Office Action, claims 1, 5-8, and 19-21 are rejected under 35 USC § 103(a) as being unpatentable over Feller, Jr. et al. (4,362,156), in view of (1) Wenstrom, Jr., (2) Hildwein, et al., (3) Wellner, et al., (4) Ternamian, or (4) Bedi. Claims 5-8 depend from claim 1 while claims 20-21 depend from claim 19.

In the Office action, the Examiner admits that the primary reference, Feller, Jr. et al., *does not disclose* texture on the interface as required by Applicant's claim 1. Instead, it is asserted that the use of texture on interfaces is conventional in the art as evidenced by the teachings of (1) Wenstrom, Jr., (2) Hildwein, et al., (3) Wellner, et al., (4) Ternamian, or (4) Bedi. Applicant respectfully disagrees.

Feller, et al. discloses an assembly for intravenous infusion of fluids into small veins. It is admitted by way of argument in the Office action that the above patents disclose various types of textures used to secure the insertion apparatus to the surrounding tissue, ensuring the stability of the apparatus while conducting *surgical procedures*, not for the infusion of intravenous fluids. Thus, the prior art lacks the required reason, suggestion, or motivation for the person of ordinary skill in the art to make the "design alternatives" as asserted by the Examiner.

The Wenstrom, Jr., Hildwein, et al., Wellner, et al., Ternamian, and Bedi references formed the subject of Applicant's Amendment dated November 6, 2003. Applicant incorporates herein by reference the discussion of the Wenstrom, Jr., Hildwein, et al., Wellner, et al., Ternamian, and Bedi references contained therein.

In stark contrast to Feller, et al., the Wenstrom, Jr., Hildwein, et al., Wellner, et al., Ternamian, and Bedi references disclose devices for use during surgery either as an irrigation passageway between the surgical site and the region outside the body or to serve to facilitate the insertion, use, and withdrawal of surgical instruments to and from the surgical site. The portions of the Wenstrom, Jr., Hildwein, et al., Wellner, et al., Ternamian, and Bedi devices which are believed to be asserted to include "texture" are present to hold the device in place during surgery to create a worksite for tubes and instruments for pass through. These references disclose devices that provide access into a body cavity so as to allow tubes or instruments to be passed through the cavity wall and for a surgical procedure to be performed therein. There would be no room, or reason to modify an intravenous infusion assembly, such as Feller, et al., to allow tubes or instruments to be passed into the vein as suggested in the Office action.

The teachings of Feller, et al. and Wenstrom, Jr., Hildwein, et al., Wellner, et al., Ternamian, and Bedi very different (non-analogous). There is no suggestion, reason or motivation in the cited references for a person of ordinary skill in the art to modify Feller, et al., with the alleged "texture" of Wenstrom, Jr., Hildwein, et al., Wellner, et al., Ternamian, or Bedi.

Applicant's device as recited in claims 1, 5-8, and 19-21, in contrast, is drawn to an

indwelling catheter which includes a textured portion which assists in fibroblast growth and adhesion unto and within the texture during the time in which the catheter body is indwelling in the patient. The texture is not of the type disclosed by Wenstrom, Jr., Hildwein, et al., Wellner, et al., Ternamian, or Bedi for the purpose of anchoring the device. Any attempt to make the modifications to Feller, et al. as asserted in the Office action, is therefore, an improper attempt to piece together the teachings of the prior art so that claims 1, 5-8, and 19-21 and be rejected as obvious.

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fritch*, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), citing, *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988)).

Moreover, the Feller, et al. reference teaches away from the asserted combination. Feller, et al., column 1, lines 7-11 states:

This invention relates to an intravenous infusion assembly and more particularly to an infusion assembly for intravenous administration of fluids into small veins at areas of the body difficult to reach, such as scalp veins of an infant.

Accordingly, Feller, et al. discloses a device for use in small veins for delicate applications, such as an infant's head. In stark contrast, the Wenstrom, Jr., Hildwein, et al., Wellner, et al., Ternamian, and Bedi references disclose devices for use during surgery either as an irrigation passageway between the surgical site and the region outside the body or to serve to facilitate the

insertion, use, and withdrawal of surgical instruments to and from the surgical site. The portions of the Wenstrom, Jr., Hildwein, et al., Wellner, et al., Ternamian, and Bedi devices which are believed to be asserted to include "texture" are aggressive and intended to retain the device in place to allow a surgical procedure to be conducted inside the body cavity. This would be contrary to the delicate application(s) of the device of the Feller et al. disclosure.

The rejection in the Office action of claims 1, 5-8, and 19-21 under 35 U.S.C. § 103(a) is believed overcome. Reconsideration and allowance of claims 1, 5-8, and 19-21 is respectfully requested.

Claims 10-18 are rejected in the Office action under 35 U.S.C. § 103(a) as being unpatentable over Feller, Jr. et al., in view of (1) Hiltenbrandt, (2) Hunt et al., (3) Bedi et al., (4) Ternamian, (5) Wenstrom, Jr., (6) Ciaglia et al., (7) Ju, or (8) O'Conner, et al. Claims 10-18 depend from claim 10. Reconsideration of claims 10-18 is respectfully requested.

In the Office action, the Examiner admits that the primary reference, Feller, Jr. et al., *does not expressly disclose* texture comprising of rounded bumps, pointed bumps, and static texture as required by Applicant's claims 10-18. Instead, it is asserted that the use of texture on interfaces is conventional in the art as evidenced by the teachings and figures of (1) Hiltenbrandt, (2) Hunt et al., (3) Bedi et al., (4) Ternamian, (5) Wenstrom, Jr., (6) Ciaglia et al., (7) Ju, or (8) O'Conner, et al. Applicant respectfully disagrees.

Feller, et al. discloses an assembly for intravenous infusion of fluids into small veins. It is admitted by way of argument in the Office action that the above patents disclose various types

of textures used to secure the insertion apparatus to the surrounding tissue, ensuring the stability of the apparatus while conducting *surgical procedures*, not for the infusion of intravenous fluids.

Thus, the prior art lacks the required reason, suggestion, or motivation for the person of ordinary skill in the art to make the “design alternatives” as asserted by the Examiner.

The Wenstrom, Jr., Ternamian, and Bedi, et al. references formed the subject of Applicant’s Amendment dated November 6, 2003. Applicant incorporates herein by reference the discussion of the Wenstrom, Jr., Ternamian, and Bedi et al. references contained therein. The Hiltenbrandt, and Hunt et al., references disclose cannulae for guiding endoscopes for surgical procedures in a body cavity. The Ciaglia et al. device discloses a device for insertion into the peritoneal space for the introduction of pneumoperitoneum and instruments for laproscopic surgery. The Ju and O’Conner, et al. references disclose diagnostic catheter devices.

In stark contrast to Feller, et al., the (1) Hiltenbrandt, (2) Hunt et al., (3) Bedi et al., (4) Ternamian, (5) Wenstrom, Jr., (6) Ciaglia et al. references disclose devices for use during surgery either as an irrigation passageway between the surgical site and the region outside the body or to serve to facilitate the insertion, use, and withdrawal of surgical instruments to and from the surgical site. The portions of the (1) Hiltenbrandt, (2) Hunt et al., (3) Bedi et al., (4) Ternamian, (5) Wenstrom, Jr., (6) Ciaglia et al. devices which are believed to be asserted to include “texture” are present to hold the device in place during surgery to create a worksite for tubes and instruments for pass through. These references disclose devices that provide access into a body cavity so as to allow tubes or instruments to be passed through the cavity wall and for a surgical

procedure to be performed therein. There would be no room, or reason to modify an intravenous infusion assembly, such as Feller, et al., to allow tubes or instruments to be passed into the vein as suggested in the Office action.

The Ju and O'Conner references disclose diagnostic catheter devices which each include an elastomeric sleeve which is roughened or knurled to facilitate gripping and rotation thereof using a three-finger catheter engagement. Thus, the alleged "texture" of Ju and O'Conner do not even contact the vessel as required by Applicant's claims 10-18.

The teachings of Feller, et al. and (1) Hiltenbrandt, (2) Hunt et al., (3) Bedi et al., (4) Ternamian, (5) Wenstrom, Jr., (6) Ciaglia et al., (7) Ju, or (8) O'Conner, et al. very different (non-analogous). There is no suggestion, reason or motivation in the cited references for a person of ordinary skill in the art to modify Feller, et al., with the alleged "texture" of (1) Hiltenbrandt, (2) Hunt et al., (3) Bedi et al., (4) Ternamian, (5) Wenstrom, Jr., (6) Ciaglia et al., (7) Ju, or (8) O'Conner, et al.

Applicant's Claims 10-18 are drawn to an intravenous stent including an interface with texture thereon. The texture is not of the type disclosed by (1) Hiltenbrandt, (2) Hunt et al., (3) Bedi et al., (4) Ternamian, (5) Wenstrom, Jr., and (6) Ciaglia et al. All of these cited references are for gaining access to a body cavity rather than to a vessel. Further, threaded surfaces which allow a surgical port to be screwed into the bodily tissue are structurally not the same as the textured surface required by claims 10-18, which assists in restraining the body in place so as to allow fibroblast growth and adhesion unto and within the texture during the time in which the

body is indwelling in the patient.

In addition, the devices disclosed in the Ju and O'Conner et al. references include a textured surface to be gripped by the surgeon, not to contact the vessel. Any attempt to make the modifications to Feller, et al. as asserted in the Office action, is therefore, an improper attempt to piece together the teachings of the prior art so that claims 1, 5-8, and 19-21 and be rejected as obvious.

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fritch*, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), citing, *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988)).

Moreover, the Feller, et al. reference teaches away from the asserted combination. Feller, et al., column 1, lines 7-11 states:

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Accordingly, Feller, et al. discloses a device for use in small veins for delicate applications, such as an infant's head. In stark contrast, the (1) Hiltenbrandt, (2) Hunt et al., (3) Bedi et al., (4) Ternamian, (5) Wenstrom, Jr., (6) Ciaglia et al., (7) Ju, or (8) O'Conner, et al. references disclose devices for use during surgery either as an irrigation passageway between the surgical site and the region outside the body or to serve to facilitate the insertion, use, and withdrawal of surgical

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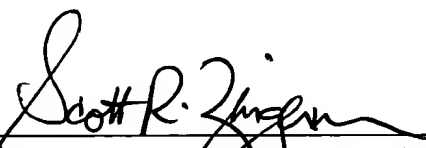
or diagnostic instruments to and from the surgical site. The portions of the (1) Hiltbrandt, (2) Hunt et al., (3) Bedi et al., (4) Ternamian, (5) Wenstrom, Jr., (6) Ciaglia et al., (7) Ju, or (8) O'Conner, et al. devices which are believed to be asserted to include "texture" are aggressive and intended to retain the device in place to allow manipulation by a surgeon during a surgical procedure. This would be contrary to the delicate application(s) of the device of the Feller et al. disclosure.

The rejection in the Office action of claims 10-18 under 35 U.S.C. § 103(a) is believed overcome. Reconsideration and allowance of claims 10-18 is respectfully requested.

No additional fee is believed to be due. However, if any fee is made payable by the filing of this paper, please consider this our authorization to charge the Deposit Account of the undersigned, No. 06-0540.

Respectfully submitted,

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